

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14**

Capital Automatic Sprinkler, LLC¹

Employer

and

**Road Sprinkler Fitters Local Union No. 669, U.A.,
AFL-CIO**

Petitioner

Case 14-RC-273162

DECISION AND DIRECTION OF ELECTION

This case is before me pursuant to a stipulated record entered between the parties on March 23, 2021.² The parties waived their right to a pre-election hearing and stipulated that the sole issue is whether the election should be conducted in person or by mail ballot, which is a non-litigable matter.³ The Board has delegated its discretion in determining such arrangements to Regional Directors. *San Diego Gas and Electric*, 325 NLRB 1143, 1144 (1998). Although election arrangements, including the voting method, are not litigable matters at a pre-election hearing, the positions of the parties were solicited for consideration. The Employer contends that a manual election is appropriate and it is possible to conduct a manual election safely notwithstanding the COVID-19⁴ pandemic circumstances at this time. Petitioner asserts that a mail ballot election should be held given the current state of the COVID-19 pandemic in Moniteau⁵ County, Missouri where the manual election would be held as well as based on compelling considerations. After carefully considering the arguments made by the parties on this issue in conjunction with the six factors the Board has ordered me to consider in determining whether or not to order a mail ballot election,⁶ I have determined that a mail ballot election is appropriate under the extraordinary circumstances currently presented by the COVID-19 pandemic.

¹ The Employer's name appears as amended by the stipulated record.

² All dates are in 2021, unless otherwise noted.

³ See *Representation-Case Procedures*, 84 Fed. Reg. 69524, 69544 fn. 82 (Dec. 18, 2019) (citing *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366, 1367 (1954)).

⁴ Throughout this decision, the terms "COVID-19," "COVID," and "Coronavirus" are used interchangeably.

⁵ Petitioner incorrectly references Moniteau County as "Monteau" County in its written statement.

⁶ *Aspirus Keweenaw*, 370 NLRB No. 45, slip op. at 4-8 (November 9, 2020).

CONCLUSIONS

Based upon the entire record⁷ in this matter, I conclude as follows:

1. The Employer is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.⁸
2. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.
4. There are no contract bars or any further bars in existence that would preclude the Region from processing the petition.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees engaged in the installation and servicing of automatic fire protection systems employed by the Employer from its facility located at 1010 West Buchanan Street, California, Missouri; but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO. For the reasons described below, I have determined that a mail ballot election will be conducted in this matter.

⁷ Per the Stipulation of Record, the parties each submitted a written statement which I have considered.

⁸ The parties stipulated that the Employer is a State of Missouri limited liability company engaged in the business of installation and servicing of fire sprinkler systems from its facility located at 1010 West Buchanan Street, California, Missouri. During the past year, a representative period of time, the Employer in the course and conduct of its business operations, purchased and received goods and services valued in excess of \$50,000 directly from sources located outside the State of Missouri. The parties also stipulated that the Employer annually derives gross annual revenues in excess of \$500,000.

1. Employer Operations

The Employer provides installation and servicing of fire sprinkler systems out of its California, Missouri facility. There are approximately six employees in the proposed bargaining unit.⁹

2. Applicable Framework When Considering a Mail Ballot Election

On November 9, 2020, the Board reiterated its longstanding preference for manual elections under *San Diego Gas* while also providing more specific and defined parameters under which Regional Directors should exercise their discretion in determining election type against the backdrop of COVID-19. The Board set forth “six situations that suggest the propriety of mail ballots due to the COVID-19 pandemic,” noting that “[w]hen one or more of these situations is present, a Regional Director should consider directing a mail-ballot election” under the extraordinary circumstances presented by the COVID-19 pandemic. *Aspirus Keweenaw*, 370 NLRB slip op. at 1. Those six situations are:

1. The Agency office tasked with conducting the election is operating under “mandatory telework” status;
2. Either the 14-day trend in the number of new confirmed cases of Covid-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher;
3. The proposed manual election site cannot be established in a way that avoids violating mandatory state or local health orders relating to maximum gathering size;
4. The employer fails or refuses to commit to abide by the GC Memo 20-10 protocols;¹⁰

⁹ In addition to employees’ meeting the standard eligibility criteria (i.e., employees hired and working on the election eligibility date regardless of how long the employee previously worked for the Employer), the parties stipulated to using the *Daniel-Steiny* eligibility formula used in the construction industry as follows: “...also eligible to vote are all employees in the unit(s) who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date, or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24-months immediately preceding the election eligibility date.” See, *Steiny & Co.*, 308 NLRB 1323 (1992); *Daniel Construction*, 133 NLRB 264 (1961), as modified 167 NLRB 1078 (1967)). Two of the six employees, no longer employed by the Employer, are eligible to vote under this eligibility formula.

¹⁰ July 6, 2020, General Counsel Memorandum 20-10, “Suggested Manual Election Protocols” (GC Memo 20-10). See also, GC Memo 21-01, dated November 10, 2020, stating “[a]side from elements set forth in GC Memo 20-10, upon which the *Aspirus Keweenaw* Board relies in part, the instructions set forth in this memorandum supersede all other instructions on the subject.”

5. There is a current Covid-19 outbreak at the facility or the employer refuses to disclose and certify its current status; and
6. Other similarly compelling considerations.

Accordingly, I analyze the instant petition using the prevailing circumstances in the state and county where the facility is located and in light of the Board's recent guidance in *Aspirus*.

3. Facts Related to the Six Factors

(1) The telework status of the Region's offices

As the Board in *Aspirus* acknowledged, all regional offices (including subregional and resident offices) have been on permissive, rather than mandatory, telework since mid-June 2020.

(2) The 14-day trends for increasing cases and the positivity rate

The Board suggests Regional Directors consider the 14-day trend in the number of new cases of COVID-19 and the 14-day testing positivity rate in the area around the Employer's facility.

In *Aspirus*, the Board does not specifically detail how the 14-day trend in the number of new cases should be evaluated. The Board does direct that county-level data for the potential manual polling place for the 14-day trend should be accessed through the "Coronavirus Resource Center" website maintained by Johns Hopkins University. 370 NLRB slip op. at 5, fn. 22. The Employer is located in Moniteau County, Missouri. According to the Johns Hopkins "COVID-19 Status Report" for Moniteau County, the data shows that the 14-day trend in the number of new confirmed cases is low – it has fluctuated from 1 case on March 25 to 0 cases on April 7, with a daily high within that range of 2 cases on April 3.¹¹

As further noted by the Board in *Aspirus* with regard to the second factor, the 14-day "percent positive" or "testing positivity rate" statistic is "based on the number of positive and total tests in the locality" and is "suggestive of transmission rates in the locality among people who have not been tested." *Aspirus*, 370 NLRB slip op. at 5. Johns Hopkins University notes that "[b]ecause a high percentage of positive tests suggests high coronavirus infection rates (due to high transmission in the community), a high percent positive can indicate it may be a good time to add restrictions to slow the spread of disease."¹² On May 12, 2020, the World Health Organization (WHO) advised governments that before reopening, testing positivity rates should remain at five percent or lower for at least 14 days,¹³ and the Board has decided to use this five percent standard in analyzing the appropriateness of a mail ballot versus manual election. State-

¹¹ <https://bao.arcgis.com/covid-19/jhu/county/29135.html> (accessed April 8).

¹² <https://www.jhsph.edu/covid-19/articles/covid-19-testing-understanding-the-percent-positive.html>. (accessed April 8).

¹³ <https://coronavirus.jhu.edu/testing/testing-positivity> (accessed April 2).

by-state statistics for 14-day testing positivity rates reported by Johns Hopkins (“Which U.S. States Meet WHO Recommended Testing Criteria?”) show that as of April 7, the State of Missouri has a positivity rate of 3.12 percent, 1.88 percent below the recommended rate.¹⁴ While Johns Hopkins reports county-level statistics for 14-day trends in the number of new confirmed cases, as noted above, it does not report statistics for 14-day testing positivity rates on a county-by-county basis. However, the State of Missouri reports county-by-county positivity rates on a weekly basis – the seven-day positivity rate reported by the state for Moniteau County for the period from March 30 through April 5 was 4.3 percent, up 3.1 percent in the preceding seven-day period.¹⁵ However, the current weekly positivity rate reported directly by Moniteau County appears to be significantly higher at 5.10 percent, although the specific dates of the most recent week, reported as “week 15,” are not clear.¹⁶ Additionally, the New York Times Missouri Coronavirus Map and Case Count, “Tracking Coronavirus in Moniteau County, Mo.” notes that Moniteau County was moved from a “high” risk of exposure for COVID-19 on April 6 (“cases have stayed about the same over the past two weeks and are still high”), to a “medium” risk of exposure on April 7 (“cases have stayed the same over the past week and are at a moderate level”), with a 14-day test positivity rate decreasing from four to three percent.¹⁷

(3) Mandatory health orders related to maximum gathering size

On March 26, Governor Mike Parson issued Executive Order 21-07 (extending previous Executive Order 20-19, issued November 19, 2020) extending the state’s public health emergency to August 31, 2020, noting that “COVID-19 continues to pose a serious health risk for the citizens of the State of Missouri.”¹⁸ The previous statewide “Public Health Warning,” issued with Executive Order 20-19, advising that the state would take a “balanced approach” to Missouri’s COVID-19 response and setting forth advisories for personal behavior, business, travel, and local government, remains in effect. These advisories make specific recommendations with regard to mask-wearing; social distancing; handwashing; limiting large gathering interactions and travel outside the state; staying home when sick; and modifying physical workspaces and developing disease response plans in workplaces. The state recommends that all residents wear a cloth face covering when in a public setting where other social distancing measures are difficult to maintain (e.g., grocery stores and pharmacies), especially in areas of significant community-based transmission.¹⁹ The COVID-response state

¹⁴ *Id.*

¹⁵ <https://showmestrong.mo.gov/data/public-health/county/> (using CDC method) (accessed April 8).

¹⁶ <https://moniteaucovid19.com/> (accessed April 8).

¹⁷ https://www.nytimes.com/interactive/2021/us/moniteau-missouri-covid-cases.html?action=click&module=covid_tracking&pgtype=Interactive®ion=TableRowLink (accessed April 8).

¹⁸ “Governor Parson Signs Executive Order 21-07 Extending State of Emergency in Missouri.” <https://governor.mo.gov/press-releases/archive/governor-parson-signs-executive-order-21-07-extending-state-emergency>. To view Executive Order 21-07, [click here](#). (accessed April 8).

¹⁹ <https://health.mo.gov/living/healthcondiseases/communicable/novel-coronavirus/statewide-orders.php> (accessed April 8).

policies give leeway to counties and cities to put in place stricter restrictions against the virus. Moniteau County has carefully monitored the COVID situation as it has evolved and continually advises its residents, in conjunction with the state's "Show Me Strong" recovery recommendations, regarding safe practices related to mask-wearing, social distancing, disinfecting, and quarantining, as well as specific guidelines regarding salons and spas, places of worship, restaurants, mass gatherings, pools and gyms, sporting events, child care facilities, travel, lodging, and business guidance.²⁰

(4) Employer's position on procedures in GC Memo 20-10

With regard to the fourth situation, the Employer agrees to commit to abide by the GC Memo 20-10 protocols.

(5) COVID-19 in the Employer's facility

The Employer has not certified, by affidavit, its COVID-19 status at its California, Missouri facility. However, the Employer states in its written statement that there have not been any positive COVID test results involving any of its employees in the past three months and, as noted, agrees to abide by GC Memo 20-10, which provides employers will certify any changes to COVID-19 status at the facility/ies in question after a manual election is directed, up to the day of the election itself.

(6) Other compelling considerations

Additional compelling considerations exist related to (1) Petitioner's concern that two eligible voters, no longer employed by the Employer, are currently working more than 100 miles from the California, Missouri facility, which is too far to reasonably travel to vote in a manual election; and (2) the Employer's concern that significant delays in mail delivery by the United States Postal Service (USPS) could jeopardize the validity of a mail election.

4. Parties' Positions

Petitioner asserts that a mail ballot election should be held given the current state of the COVID-19 pandemic in Moniteau County, Missouri where a manual election would be held. In this regard, Petitioner primarily contends that the second factor cited by the Board in its recent *Aspirus* decision and order, related to the 14-day testing positivity rate in the county, is easily satisfied in this case. Petitioner additionally contends that, aside from issues related to the COVID-19 pandemic, a manual election would place an unreasonable travel burden on two eligible voters no longer employed by the Employer who are currently working more than 100 miles from the Employer's California facility where a manual election would be held.

The Employer asserts that the Board strongly favors manual elections and a manual election would be safe here in light of the current state of the COVID-19 pandemic in Moniteau

²⁰ <https://moniteaucovid19.com/public-information> (accessed April 8).

County. In this regard, the Employer notes that “infection percentages have been significantly declining each month since November 2020, while the number of individuals vaccinated has been significantly increasing each month.” Employer also asserts that “as of [March 22], there are only seven (7) current COVID cases in Moniteau County with a population of 16,132 citizens, amounting to a 0.04% positivity rate, which is well below the DHSS [Missouri Department of Health and Senior Services].” The Employer also highlights that it is possible to conduct a manual election safely at this time by following the safety precautions set forth in GC Memo 20-10. The Employer contends that the small size of the petitioned-for unit and large size of its facility with no customer presence, as well as a favorable ventilation system and ease of ability to stay within state and local COVID restrictions and recommendations, will allow for safe voting at its California, Missouri facility. Specifically, the Employer states it would comply with: setting up the voting area to allow for social distancing and limited contact between individuals; mandatory mask-wearing during election proceedings; and, all other specific requirements set forth in GC Memo 20-10. The Employer further notes that there have not been any positive COVID test results involving any of its employees in the past three months. Finally, the Employer contends that, aside from issues related to the COVID-19 pandemic, a manual election is appropriate due to current significant delays in mail delivery by the USPS which could jeopardize the validity of a mail election.

5. Analysis of the Six Factors in *Aspirus*

There are no issues with regard to the first, third and fourth factors – the Region’s offices are not operating under a mandatory telework policy; the proposed manual election site does not appear to violate any health orders relating to maximum gathering size; and the Employer agrees to commit to abide by the GC Memo 20-10 protocols.

Regarding the second factor, I acknowledge the 14-day trend in the number of new confirmed cases is low. However, I find that there is current evidence of ongoing COVID-19 infection in Moniteau County based on positivity rates reported, as explained above. In this regard, I particularly note conflicting reporting of positivity rates between the state and the county in that Missouri reports a 4.3 percent seven-day positivity rate while Moniteau County appears to report a much higher 5.10 percent seven-day positivity rate which is .1 percent above the Board’s five percent standard referenced in *Aspirus*. I also note that the New York Times coronavirus tracker categorized Moniteau County as a high risk of exposure for COVID-19 until April 7, at which time it was listed as medium risk. Though I further note that Moniteau County had been listed at medium exposure risk from February 28 through March 13 before it went back up to high exposure risk from March 14 through April 7, clearly establishing the volatile nature of the health risk. Overall, I find this evidence is sufficient to meet the second factor of the Board’s guidance for when a mail-ballot election should be considered and leads me to conclude there is too much risk to holding a manual election at this time or in the near future.²¹

²¹ I reject the Employer’s calculation of a .04 percent positivity rate on March 22 – the Board’s standard is based on *testing* positivity rates and Employer does not provide any support for its one-day calculation. At any rate, its calculation of .04 percent appears to be in error and should be .0004 percent.

Regarding the fifth factor and the current COVID-19 status at the Employer's facility, the Employer acknowledges that the applicable legal standard regarding manual versus mail ballot elections during the COVID-19 pandemic is outlined in *Aspirus* in which the Board stated:

...for the duration of the pandemic, we require that in all cases where a party requests a manual election, the employer shall certify, *by affidavit*, as part of its submission regarding election arrangements, how many individuals present in the facility within the preceding 14 days have tested positive for COVID-19 (or are awaiting test results, are exhibiting characteristic symptoms, or have had contact with anyone who has tested positive in the previous 14 days). The Employer must also supplement its initial submission and certify any changes to the facility's COVID-19 status after a manual election is directed, up to the day of the election itself. Based on these certifications, the determination that there is a COVID-19 outbreak at the employer's facility or the employer's failure or refusal to provide the required certifications will ordinarily indicate the propriety of a mail ballot election. 370 NLRB slip op. at 7 (emphasis added).

I note that the Employer has not certified, by affidavit, its COVID-19 status at its California, Missouri facility. However, as noted, the Employer has stated in its written statement that there have not been any positive COVID test results involving any of its employees in the past three months and further agrees to abide by GC Memo 20-10, which provides employers will certify any changes to COVID-19 status at the facility/ies in question after a manual election is directed, up to the day of the election itself.

Finally, I consider the sixth factor and compelling considerations raised by both parties. First, Petitioner argues that, aside from considerations concerning the COVID-19 pandemic, a manual election would place an unreasonable travel burden on two eligible voters no longer employed by the Employer who are currently working more than 100 miles from the Employer's California, Missouri facility where a manual election would be held. The Employer responds that regardless of where these eligible voters now work, the travel distance between the voting site (the California facility) and their last known resident addresses ranges from 33.6 to 88.3 miles. The NLRB Casehandling Manual (Part Two) Representation Proceedings, Section 11301.2 (citing *San Diego Gas & Electric*), advises that where eligible voters are "scattered" (e.g., where "they are not present at a common location at common times," or "where they work in different geographic areas"), this normally suggests the propriety of using mail ballots. Based on the parties' conflicting positions with regard to travel distances of the voters in question and in light of my decision that a mail ballot election is appropriate for the reasons stated herein, I do not find it necessary to decide this issue.

Next, the Employer argues that significant delays in mail delivery by the USPS could jeopardize the validity of a mail election. Although I do not discount the concern regarding potential voter participation issues and acknowledge the potential risks of mail delivery procedures on the outcome of a mail ballot election, there is no indication that the USPS is unable to deliver mail to the California area or surrounding areas, that the petitioned-for employees would be unable to understand the mail balloting procedure, that the addresses of the eligible employees are not known or up to date, or that there are any impediments to voter

participation. Any mail ballot election, held at any time under any circumstances, includes procedures by which an employee who has not received a ballot in a timely manner may receive a duplicate. Further, in this case, taking into consideration the Employer's concerns, I will extend the normal two-week period to return mail ballots to four weeks. While concerns about potential disenfranchisement of voters could be relevant to whether a mail-ballot election is appropriate, such concerns do not automatically require a manual election. In fact, there appears to be significant risk of voter disenfranchisement in a manual election for any voter who is (1) diagnosed with COVID-19 immediately preceding the election, (2) self-quarantining based on contact tracing, potential exposure, or symptoms of COVID-19, or (3) or has a temperature or other symptoms on the day of election even if they are not due to COVID-19. Any party is, of course, free to present evidence of any actual disenfranchisement of voters, if applicable, in postelection objections.

Given the above conditions, I find the appropriate and most responsible measure to ensure a safe election is a mail-ballot election. A mail-ballot election will eliminate the risk of further infection and the risk of unnecessarily exposing employees, Board agents, party representatives, and their families to COVID-19, and it will ensure that the unit employees have the opportunity to vote promptly.

ELECTION DETAILS

I have determined that the election will be conducted by mail. The ballots will be mailed to employees employed in the appropriate voting group at 3:00 p.m. on **Monday, April 26, 2021**, by personnel of the National Labor Relations Board, Region 14, from the office of the National Labor Relations Board, Subregion 17 – 8600 Farley Street – Suite 100, Overland Park, Kansas 66212-4677. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **May 10, 2021**, or otherwise requires a duplicate mail ballot kit, should communicate immediately with the National Labor Relations Board by calling the Subregion 17 Office at (913) 275-6525.

The ballots will be commingled and counted by the Subregion 17 office at 2:00 p.m. on **Monday, May 24, 2021**. In order to be valid and counted, the returned ballots must be received by the Subregion 17 office prior to the counting of the ballots. The parties will be permitted to participate in the ballot count, which will be held by videoconference. A meeting invitation for the videoconference will be sent to the parties' representatives prior to the count. No party may make a video or audio recording or save any image of the ballot count.

VOTING ELIGIBILITY

Eligible to vote are those in the unit who were employed during the weekly payroll period ending **April 3, 2021** including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. In addition to employees meeting the standard

eligibility criteria, i.e., employees hired and working on the election eligibility date, regardless of how long the employee previously worked for the Employer, I shall also find eligible other employees in the unit: (1) who have been employed for 30 working days or more within the 12 months preceding the eligibility date for the election, or (2) who have had some employment in those 12 months and have been employed for 45 working days or more within the 24-month period immediately preceding the eligibility date. *Steiny & Co.*, 308 NLRB 1323 (1992); *Daniel Construction*, 133 NLRB 264 (1961), as modified 167 NLRB 1078 (1967).

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote by mail as directed above.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

VOTER LIST

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellphone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **Tuesday, April 13, 2021**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word (.doc or .docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

The list must be filed electronically with the Region and served electronically on the other parties named in this decision. The list must be electronically filed with the Region by

using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

POSTING OF NOTICES OF ELECTION

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

Pursuant to Section 102.5(c) of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlr.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB

Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

DATED at St. Louis, Missouri, this 9th day of April 2021.



William B. Cowen, Acting Regional Director
National Labor Relations Board, Region 14/Subregion 17
8600 Farley Street, Suite 100
Overland Park, Kansas 66212-4677